



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/494,897	01/31/2000	Timothy E. Dickson	2400-384	4099

27820 7590 10/31/2003

WITHROW & TERRANOVA, P.L.L.C.
P.O. BOX 1287
CARY, NC 27512

EXAMINER

VON BUHR, MARIA N

ART UNIT	PAPER NUMBER
----------	--------------

2125

DATE MAILED: 10/31/2003

14

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/494,897

Applicant(s)

DICKSON, TIMOTHY E.

Examiner

Maria N. Von Buhr

Art Unit

2125

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: _____.

Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____



Maria N. Von Buhr
Primary Examiner
Art Unit: 2125

Continuation of 5. does NOT place the application in condition for allowance because:

As to the first point, that "the Myers et al. reference is commonly owned with the present application," the statement presented by Applicant is insufficient to overcome the rejection. This rejection under 35 U.S.C. §102(e) might be overcome either by a showing under 37 CFR §1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR §1.131.

As to the second point, that "Myers et al. is not comparing fuel flow rates per se. Myers et al. is comparing a pulse stream indicative of a fuel flow rate or a number of pulses in a pulse stream. The pulse stream is not an amount of fuel alleged to be dispensed, but rather is a pulse stream. This pulse stream can be used to derive an amount of fuel alleged to be dispensed, but under the strict scrutiny required in an anticipation analysis, the pulse stream is not an amount of fuel alleged to be dispensed," Applicant's argument is not persuasive. Upon further consideration, after the interview on 07 August 2003, as described in Paper No. 12, Examiner deems that the pulse stream of Myers et al. IS an amount of fuel alleged to be dispensed, albeit in a different unit of measure from customary gallons or liters. In this regard, Myers et al. specifically assert "generating a digital pulse stream INDICATIVE OF THE VOLUME AND FLOW RATE OF FUEL DISPENSED" (see at least the abstract; emphasis added). Hence, the rejection stands.